

MEMORANDUM

November 30, 1943

TO The Director of Retirement Claims

FROM The General Counsel

SUBJECT Idaho Traction Company

I herewith submit my opinion on the following:

QUESTION

Was the Idaho Traction Company an "employer" under the Railroad Retirement Act and is service to it creditable toward annuities under that Act?

OPINION

It is my opinion that the Idaho Traction Company from April 1, 1912, the date it began operations, to September 1, 1915, when its operations were taken over by the Boise Valley Traction Company, was an "employer" under the Railroad Retirement Act and that service to it during that period is creditable toward annuities under that Act.

DISCUSSION

Information contained in various editions of Poor's and Moody's manuals is that the Idaho Railway, Light & Power Company was incorporated on November 23, 1911, under the laws of Maine and early in 1912 acquired, together with certain power and light properties, the electric railway of the Boise Railroad Company, the Boise & Interurban Railway Company, and the Boise Valley Railway Company, giving it the ownership of a standard gauge electric railway system approximately 85 miles in length, extending from Boise along the south side of the Boise River to Caldwell, where it crossed the river and followed the north side of the river back to Boise, all in the State of Idaho.

The Idaho Traction Company was incorporated on March 20, 1912, under the laws of Delaware, in the interest of the Idaho Railway, Light & Power Company and for the purpose of operating under lease the electric railway properties referred to above. All of its capital stock, with the

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exception of directors' qualifying shares, was owned by the Idaho Railway, Light & Power Company. It began operation of the railway system on April 1, 1912, and continued its operation until the properties were acquired by the Boise Valley Traction Company^{1/} on September 1, 1915.

An examination of the records of the Interstate Commerce Commission shows that the Idaho Traction Company filed with that body annual (electric) operating reports for the years 1913, 1914 and 1915.^{2/} The following table shows the equipment owned by the company and its passenger and freight revenues:

<u>Year</u>	<u>REVENUES</u>		Percentage of freight to pas- senger revenues	<u>EQUIPMENT</u>	
	<u>Passenger</u>	<u>Freight</u>		<u>Passenger</u>	<u>Freight</u>
1913	\$173,081	\$12,786	7.3%	35	12
1914	330,503	30,723	9.2%	34	14
1915	294,986	33,080	11.2%	34	14

The records do not indicate that the company filed with the Commission any tariffs, concurrences, or powers of attorney. It does not appear to have been a party to any proceedings before the Commission and its name does not appear in the Official Guide of Railways or the Official Equipment Register.

Information furnished by Mr. G. E. Barnard, Assistant Treasurer, Idaho Power Company, is that approximately 70 per cent of the railway of the company was on privately owned right-of-way and 30 per cent on public streets or highways; that the company sold tickets over its own line only, but that freight, both carload and less-than-carload, was interchanged with the Union Pacific at Boise, Caldwell, Middleton and Meridian, Idaho. He states that "cars for loading interstate shipments were ordered from and furnished by the Union Pacific Railroad Company" and that such interstate freight was handled on through bills of lading.

Based on the foregoing information, it is my opinion that the Idaho Traction Company, from April 1, 1912, the date it began operations, to September 1, 1915, when its operations were taken over by the Boise Valley Traction Company, was a carrier by railroad subject to Part I of

^{1/} Held to have been an "employer" from September 1, 1915 to May 17, 1928. See L-43-431 and supplemental Form G-341 No. 43-266.

^{2/} The Idaho Railway, Light & Power Company filed annual lessor reports for the years 1913, 1914 and 1915.

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the Interstate Commerce Act and that during that period the railway operated by it was more than a street, suburban or interurban electric railway. While the company does not appear to have filed any tariffs, concurrences or powers of attorney with the Interstate Commerce Commission, it did file annual operating reports, and information furnished by an officer of the company, which presumably is now in possession of the records, is that it had physical connection with one of the larger trunk line carriers (Union Pacific) at four points on its line over which connection it interchanged both carload and less-than-carload freight. Furthermore, its freight revenues ran from 7.3 per cent to 11.2 per cent of its passenger revenues. It is stated further that the "company issued through bills of lading on interstate shipments and made junction settlement of charges." Although this latter statement is not necessary to a determination that the company was engaged in interstate commerce, it does show that the company recognized that it was so engaged and that such traffic was general and not unusual. Moreover, Caldwell, one of the points of interchange with the Union Pacific, is within 15 or 20 miles of the Idaho-Oregon State Line.

It is noted that Mr. Edwin Ezra Smith (S.S.A. No. 700-09-3405) claims service to the Boise Valley Traction Company from May 1907 to June 1923. Since the Boise Valley Traction Company did not begin operations until September 1, 1915, Mr. Smith's service during the period April 1, 1912 to September 1, 1915, may have been rendered to the Idaho Traction Company.

Joseph H. Freehill
General Counsel